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No. 300.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES, EX REL. REBECCA J. TAYLOR,
PLAINTIFF IN ERROR,
v.
WILLIAM H. TAFT, SECRETARY OF WAR.

IN ERROR TO THE COURT OF APPEALS, DISTRICT OF COLUMBIA.

MOTION TO DISMISS, AND BRIEF IN SUPPORT THEREOF.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES, EX REL. REBECCA J. Taylor, plaintiff in error, *v.* WILLIAM H. TAFT, SECRETARY OF WAR. } No. 300.

MOTION TO DISMISS, AND BRIEF IN SUPPORT THEREOF.

Comes now the Solicitor-General on behalf of the defendant in error in the above-entitled cause and moves the court to dismiss the same for want of jurisdiction.

The plaintiff in error, Rebecca J. Taylor, was, on May 12, 1902, a clerk in the classified civil service of the United States and employed in the War Department. On that day there appeared in a newspaper published at Washington an article purporting to be signed by her, and making some very serious reflections upon the President of the United States. A few days later the Secretary of War directed that Miss Taylor be called upon to state whether she was the author of this publication.

In the event that she should admit the authorship, it was ordered that her attention should be invited to section 8 of civil-service rule 11, and

that she be allowed three days in which to submit any answer or statement she might wish to make. To this plaintiff in error answered, admitting that she was the author of the article mentioned. She offered no statement in explanation or defense but insisted that she had not been notified of any charge which called for answer under the civil service rule referred to. Upon this answer the Secretary entered an order dismissing her from the service, and filed in the records of the Department a memorandum assigning as reason therefor the publication of the article subscribed by her.

Plaintiff in error thereupon brought a petition for mandamus in the Supreme Court of the District of Columbia to compel the Secretary of War to restore her to her former position in the clerical service. The petition recites sections 3 and 8 of civil-service rule 11, the former of which prohibits dismissals for "political or religious opinions or affiliations," and the latter prescribes that no clerk shall be dismissed from the classified service except after being furnished with a copy of the reasons assigned for removal and an opportunity to answer the same. After setting out the facts relative to her dismissal substantially as above stated, the plaintiff in error assigns as grounds of relief:

First. That the procedure taken for her dismissal from office was not in conformity with the executive regulations set out, in that no copy of the reasons therefor, such as is required by those regulations, was furnished the petitioner; and,

Second. That her removal from office was because of the fact that she held and exprest political opinions differing from those of the defendant.

The Secretary of War answered the petition, setting out the facts somewhat more fully than plaintiff in error had done. He denies that Miss Taylor was removed on account of her political or religious affiliations, and avers that such action was taken by him because of the article published by her, and "by reason of the derogatory and disrespectful statements therein appearing of and concerning the President of the United States in relation to the conduct of him as Commander-in-Chief of the Army of the United States."

To this answer plaintiff in error filed a demurrer, which was overruled, whereupon she elected to stand upon the demurrer, and judgment was entered denying the writ. This judgment was affirmed by the Court of Appeals and a writ of error sued out from this court. (24 App. Cas. D. C., p. 95.)

ARGUMENT.

The right to a writ of error from the Supreme Court of the United States is given in section 233 of the District of Columbia Code (31 Stat., 1189, 1227), which reads as follows:

> Any final judgment or decree of the Court of Appeals may be reexamined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal,

> in all cases in which the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars, in the same manner and under the same regulations as existed in cases of writs of error on judgments or appeals from decrees rendered in the supreme court of the District of Columbia on February ninth, eighteen hundred and ninety-three, and also in cases, without regard to the sum or value of the matter in dispute, wherein is involved the validity of any patent or copyright or in which is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States.

The present case does not involve a pecuniary amount sufficient to warrant the writ of error, nor does it involve the validity of any patent or copyright, and the validity of no treaty or statute of the United States is brought in question. If this writ of error can be supported, it must be under the clause providing for such writ where the validity of an authority exercised under the United States is drawn in question.

The plaintiff in error does not question the authority of the President or his proper subordinates to dismiss her when the required formalities have been complied with. But she claims in the present case that there were certain rules and regulations of the civil service which were not followed in the matter of her dismissal, and hence that such dismissal was illegal. We have then drawn in question not the *validity* of an authority

exercised under the United States, but the *construction* and *application* of such authority. The fact that there is authority to dismiss is not questioned; the contention is that this authority was not exercised in the proper manner.

In the case of *South Carolina* v. *Seymour* (153 U. S., 353), a motion to dismiss for want of jurisdiction, a writ of error to the Court of Appeals of the District of Columbia, was allowed. While that case was decided in 1894, before the passage of the Code of Laws for the District of Columbia, the act by which it was governed was identical with the wording of the present section 233 of the Code. The question in that case related to the validity of an authority exercised under the United States. But the court held—

> In order to come within this clause, the validity, and not the construction only, of a treaty or statute of the United States, or of an authority exercised under the United States, must be directly drawn in question.

The same question was raised in the case of *United States* v. *Lynch* (137 U. S., 280), upon a motion to dismiss for want of jurisdiction a writ of error to the Supreme Court of the District of Columbia. That case was a petition for a writ of mandamus against John R. Lynch, Fourth Auditor, and B. F. Gilkeson, Second Comptroller of the Treasury, to compel them to audit the account of the plaintiff, who was an officer in the Navy. It was claimed that by the disallowance of the plaintiff's claim for

mileage these officers exercised a discretion which they did not possess; that this was an invalid exercise of an authority under the United States; and that hence the validity of the authority was drawn in question. The court, however, held otherwise (pp. 285, 286):

> The validity of a statute is not drawn in question every time rights claimed under such statute are controverted, nor is the validity of an authority every time an act done by such authority is disputed.
>
> What the relator sought was an order coercing these officers to proceed in a particular way; and this order the Supreme Court of the District declined to grant. If we were to reverse that judgment upon the ground urged, it would not be for want of power in the Auditor to audit the account, and in the Comptroller to revise and pass upon it, but because those officers had disallowed what they ought to have allowed, and erroneously construed what needed no construction. This would not in any degree involve the validity of their authority.

The case of *Steinmetz* v. *Allen* (192 U. S., 543) is not in point, as the court there held that the rule under which the authorities acted was invalid.

The motion to dismiss for want of jurisdiction should be granted.

HENRY M. HOYT,
Solicitor-General.

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